



**KENAI PENINSULA BOROUGH**

144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7599  
BUSINESS (907) 262-4441 FAX (907) 262-1892

**DALE BAGLEY  
MAYOR**

February 28, 2001

State of Alaska  
Division of Governmental Coordination  
Office of the Governor  
P.O. Box 110030  
Juneau, Alaska 99811

Attention: Randy Bates

RE: Proposed Changes to Chapter 50. ALASKA [Process for Consistency Determination, Review, and Petition for] Coastal Management Program (ACMP) Implementation

Dear Mr. Bates;

The Alaska Coastal Policy Council proposes to adopt regulation changes in Title 6 of the Alaska Administrative Code, dealing with review of a project for consistency with the Alaska Coastal Management Program (ACMP). These changes appear to be procedural in nature; for the most part codifying and clarifying review processes including the following:

1. 6 AAC 50 will be amended (6 AAC 50.925 and 6 AAC 50.990) and repealed (6 AAC 50.010 – 6 AAC 50.370). These regulations provide the requirements for consistency review with the ACMP. These requirements, with the amendments described in this notice, will be readopted within the revised 6 AAC 50.
2. 6 AAC 50 will be amended by adding new sections that comprehensively reorganize 6 AAC 50 to (1) revise, clarify, and make specific all aspects of consistency review of a project with the ACMP; (2) revise, clarify, and make specific the consistency review process for project affecting any coastal use or resource that requires only state resource agency authorizations; (3) revise, clarify, and make specific the consistency review process for a federal activity affecting any coastal use or resource; (4) revise, clarify, and make specific the consistency review process for a federally regulated activity affecting any coastal use or resources; (5) make specific the public notice and public involvement requirements and opportunities for the public during a consistency review; (6) clarify the elevation and petition processes; (7) clarify and make specific the development,

implementation, and review process for general permits, nationwide permits, categorically consistent determinations, general consistency determinations, and general consistency concurrences; (8) clarify and make specific the consistency review process for project modifications, authorization renewals, and authorization expirations; (9) provide an optional alternative consistency review process for projects that are likely to have more than minimal impact to coastal uses and resources; (10) revise, clarify, and make specific the requirements and application for an emergency expedited consistency review and waiver of a consistency review; (11) clarify the close of business as the deadline for actions required to be taken on a particular day; (12) provide new definitions of terms used in the regulations, amend definitions of existing terms, and delete definitions of terms that will no longer be used in the regulations; and (13) make the chapter more concise, orderly, and easier to understand.

**KPB Coastal District staff has discussed the proposed changes with the Division of Governmental Coordination analyst in charge of the project, the KPB Planning Commission, and with KPB Legal Department staff. It appears that the proposed project is consistent with the KPB Coastal Management Program given the appropriate response to the following concerns and suggestions.**

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At the 2/26/01 Planning Commission Meeting, the Kenai Peninsula Borough Planning Commission (KPBPC) reviewed the proposed changes to the 6 AAC 50 as issued in the December 3, 2000 Public Review and Comment Package. The KPBPC finds the proposed changes consistent with the KPB Coastal Management Program with significant consideration given the following alternative measures.

- 1) The formulation of the proposed final document should continue to include open dialogue with all the coastal resource districts in order to insure that the character of district concerns area adequately addressed in the proposed changes.
- 2) Regarding postings of proposed projects, the posting locations should at minimum include the Kenai Peninsula Borough building in Soldotna, as well as a standard location in the nearest affected community. In the proposed changes, it is indicated that DGC proposes to limit posting to a single location. This would be inappropriate for the Kenai Peninsula Borough which has a diverse geographic setting and population base. Additionally, Project Information Packets should be sent not only to the KPB Coastal District office, but also a standard location in major affected communities (such as Homer, and Seward), which are in proximity of a proposed project.
- 3) The proposed final consistency determination should receive a new review, with full opportunity for comment from public and affected coastal resource districts regardless of the presence or absence of prior participation.
- 4) **6 AAC 50.200** Suggest providing a clear definition for “consistent with the ACMP”.
- 5) **6 AAC 50.055 (b) (1)** Change the paragraph to read, “is considered to have expertise in the

interpretation and application of its program *and enforceable policies*; and”

- 6) **6 AAC 50.235** The following comments need to be fully considered by the DGC:
- i) *The affected coastal resource district should clearly be included in the initial determination as to whether or not the proposed activity has significant potential for impact to coastal resources prior to scheduling the project under a 30 day or 50 day review.*
  - ii) *The schedule for the conversion of a 30 day review to a 50 day review is much too brief. Districts and resource agencies with heavy workloads will be sorely pressed to determine whether the review needs to be converted within the first ten days. We would suggest that the time frame, or deadline for conversion be extended to the 17-day mark comment deadline.*
- 7) **6 AAC 50.235 (b)** Change the paragraph to read “in consultation with each resource agency *and affected coastal resource district...*”
- 8) **6 AAC 50.220 (d)** Change the paragraph to read, “DGC, *the affected coastal resource district through the DGC*, or a resource agency...”
- 9) **6 AAC 50.255 (c)** Change the paragraph to read, “In its consistency review comment, a review participant may address an enforceable policy outside their area of expertise. The coordinating agency shall give a resource agency or coastal resource district with expertise, *including that defined in approved enforceable policies*, due deference.”
- 10) **6 AAC 50.260 (e)** Additionally provide that modifications or rejection of proposed alternative measures will be receive consultation by the commenting review participant prior to issuing the proposed final determination for consistency with the ACMP.
- 11) **6 AAC 50.260 (b)** Change the paragraph to read “...each review participant, *any affected coastal resource district...*”
- 12) **6 AAC 50.275 (g)** Change the paragraph to read, “When there is an administrative appeal or additional review under an agency’s statutory or regulatory authority, a resource agency may modify a condition identified in the final consistency determination if the deciding agency, *in consultation with the affected coastal resource district*, finds the project will remain consistent with the ACMP.
- 13) **6 AAC 50.510** Suggest clarifying that for public comment to bear weight in the review process, and for subsequent (if any) appeals and elevations. Comments need to be initially received within the normal review period.
- 14) **6 AAC 50.520** Suggest that public hearings occur in the nearest affected community.

- 15) **6 AAC 50.610 (f)** “Only resource agency directors may make a final decision.”  
Regarding the elevation process it is unclear as to whether the affected coastal resource district has a director voice in this final decision.
- 16) **6 AAC 50.620 (b)** Clarify “timely response” to the initial review period is required is required for all subsequent petitions.
- 17) **6 AAC 50.700 (c)** This paragraph needs to insure that all related activities associated with a given project which are necessary for the implementation of that project are considered prior to issuing the previously approved general permit.
- 18) **6 AAC 50.710 (e) (1)** Change the paragraph to read, “distribute the proposed categorically consistent determination or amended list to review participants *and affected coastal resource district*;”
- 19) **6 AAC 50.730 (e) (1)** Change the paragraph to read, “distribute the proposed general consistency determination or amended list to review participants *and affected coastal resource district*;”
- 20) **6 AAC 50.750 (a) (d)** Change the following paragraphs of the section to read,
- i. “(a) DGC, in consultation with the resource *agencies and affected coastal resource district*, shall develop and maintain a list of activities that are likely to affect coastal uses or resources that require a resource agency authorization (the “C” list).”
  - ii. “(d) DGC, in consultation with the state resource agencies *and affected coastal resource district*, may develop and maintain a list of authorizations that are not subject to an individual consistency review.”
- 21) **6 AAC 50.760 (b) (1)** Change the paragraph to read, “distribute the proposed general permit to the review participants, *affected coastal resource district*, and DGC.”
- 22) **6 AAC 50.780** Make a statement that even in the case of repetitive activities, if there are essential related and associated activities, these must be considered prior to approving the issuing of any general consistency determination.
- 23) **6 AAC 50.810** Include the affected coastal resource district in dialogue prior to project modifications after issuance of final consistency determinations.
- 24) **6 AAC 50.990** Definitions.
- i. It is not clear within the definitions exactly what “federal activity” means in the context of these proposed changes to the Alaska Administrative Code. It appears that the phrase means “federal regulatory activity” or

“federal permitting activity.” We suggest a clarification of this phrase.

**Thank you for the opportunity to comment.**

Sincerely,

Daniel Bevington  
Coastal District Coordinator

cc:

Electronic only:  
Holly Montague, KPB Attorney  
Pat Galvin, DGC  
Don McKay, ADF&G/DHR  
Tim Rumfelt, DEC  
Karlee Gaskill, DNR